IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.963 OF 1996
IN
NOTICE OF MOTION NO.2022 OF 1995
IN
PETITION NO.341 OF 1995

1. Victor John Gomes
Since deceased

1(a) Ms.Maggi Wd/o.Late Victor
John Gomes

2(b) Miss Jully Victor Gomes

3(b) Miss Philomena Victor Gomes

4(d) Miss Hezal Victor Gomes

5(e) Master Dyrell Victor Gomes

6(f) Miss Quiletter Victor Gomes
No.6 being minor represented
by her mother and natural
Guardian Ms.Maggi Victor Gomes,

All residing at Victor Niwas,
Gomes Compound, Kurar Village,
Malad (East), Mumbai-400 097.

2. Paul John Gomes,
Indian Christian, Inhabitant
of Bombahy, residing at Gomes
Compound, Kurar Village,
Malad (E), Bombay-400 097.

3. Ochie John Gomes, .. Appellants
Indian Christian, Inhabitant (Orig.Petitioners)
of Bombay, residing at Gomes Compound,
Kurar Village, Malad (E),
Bombay-400 097.

Nos.1,2 and 3 abovenamed all
being the three Executors
named under Will of the said
Deceased.

v/s.

1. Thomas John Gomes
Christian of Bombay,
Indian Inhabitant, aged 53 years.

2. Robert John Gomes, .. Respondents
Christian of Bombay, (Orig.Caveator)

Indian Inhabitant,
aged 48 years.

Both residing at House No.212/8,
Pushpa Park, Malad (E), Bombay-400097.

Mr.M.N.Nikose for the appellants.

CORAM : R.M.LODHA AND
P.V.KAKADE, JJ.

DATED : 2nd December, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

This appeal is directed against the order dated July 17, 1996, passed by the learned motion Judge appointing Court Receiver in respect of the estate of the deceased John Domnic Gomes.

2. John Domnic Gomes had two wives. He fathered five sons. Thomas and Robert were born out of the wedlock of the first wife. Victor, Paul and Ochie were born from the second wife. John happened to have big estate. He was owner of 17 chawls. He also had jewellery and cash deposited in the fixed deposit. John died on October 9,1993. He is said to have executed a Will on October 7, 1993 bequeathing his entire estate to three sons (Victor, Paul and Ochie) from the second wife. The testamentary petition for probate of the Will dated October 7, 1993 was filed by Victor, Paul and Ochie. Thomas and Robert, the two sons from the first wife entered caveat. The caveators took out notice of motion for appointment of Court Receiver in respect of the estate of the deceased.

It was alleged that the estate is being mismanaged and dissipated by the petitioners.

3. The notice of motion was contested by the petitioners. The affidavit in opposition was filed by Victor on November 10, 1995. Alongwith the affidavit in opposition, few documents were annexed showing the expenditure on various occasions.

4. The learned motion Judge heard the counsel for the parties and was of the view that the accounts have been manipulated by the petitioners. The estate of the deceased was found to have been mismanaged. It appears from the impugned order that the learned motion Judge himself checked each and every item shown in the exhibits annexed to the affidavit dated November 10, 1995 and found that the petitioners have inflated the items of expenditure and they included certain expenditure which had no relation to the management of the estate of the deceased.

5. In para 20 of the impugned order, the learned motion Judge observed thus-

> "20. Now these facts, as emerging from this affidavit dated November 10, 1995 filed by Victor Gomes and the various documents annexed thereto as exhibits, clearly show that the positive attempt is made by the Petitioners to claim as deductions from the income of the Estate

of the deceased. A large and inflated amounts which have no relation to the Management of the Estate of the deceased and for which no receipts are produced shown. As said above, Mr.Rao, the learned counsel for the Petitioners is fair enough to concede that quite some items of expenditure claimed by the petitioners are ridiculous and they could have no relation to the Management of the Estate of the deceased and they should not have been claimed by the petitioners by way of expenses incurred by them for the Management of the Estate of the deceased. I have myself checked each and every item shown in the exhibits annexed to the affidavit dated November 10,1995 filed by Victor Gomes and I am more than convinced that the Petitioners have not only inflated the items of expenditure but also have included in the exhibits to the affidavit expenditure which could have no relation to the Management of the Estate of the deceased. Now this affidavit was filed by Petitioner No.1 as he was ordered by the Court to do so. The Court ordered the Petitioners to furnish the details about the expenditure incurred by them for the Management of the Estate of the deceased. In response thereto, this Affidavit has been filed. A positive attempt is made by the petitioners to as much get out of the liability in respect of the income derived by them from the Estate of the deceased as was possible. Towers that end, they have manipulated facts and have give, what Mr.Road termed was ridiculous expenses and what I would say, absolutely false figures."

6. Then in para 25 of the impugned order, the learned motion Judge observed thus-

"25. After having heard the learned counsel of the both the sides, even pending the Main petition for probate, I am convinced that the petitioners have betrayed positive tendency of concealment of facts from the Court and projecting false facts before the Court solely with a view to appropriate unto themselves as much out of the income of the Estate of the deceased as could possibly be done. The record also shows that during their management of the Estate of the deceased, the Petitioners have changed certain

tenancies and they have not accounted the amounts received by them in connection with the changes of the tenancies."

7. The learned counsel for the appellants could not demonstrate that the prima facie conclusions arrived at by the learned motion Judge suffered from any infirmity.

8. The petitioners having been found guilty of manipulating the accounts, could not have been permitted to continue with the management of the estate of the deceased. The appointment of the Court Receiver in the facts and circumstances was necessarily just and proper for protection and preservation of the estate of the deceased.

9. There is no infirmity in the impugned order.

10. Appeal has no merit and is dismissed with no order as to costs.

(R.M.LODHA, J.)

(P.V.KAKADE, J.)